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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1928.

No. [redacted] 6

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY, A CORPORATION, APPELLEE,

v.

WILLIAM J. STRATTON, SECRETARY OF STATE OF THE STATE OF ILLINOIS, APPELLANT.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

STATEMENT AS TO JURISDICTION ON APPEAL.

OSCAR E. CARLSTROM,
Attorney General of Illinois,
Counsel for Appellant.

BAYARD LACEY CATRON,
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SPRINGFIELD, ILLINOIS.

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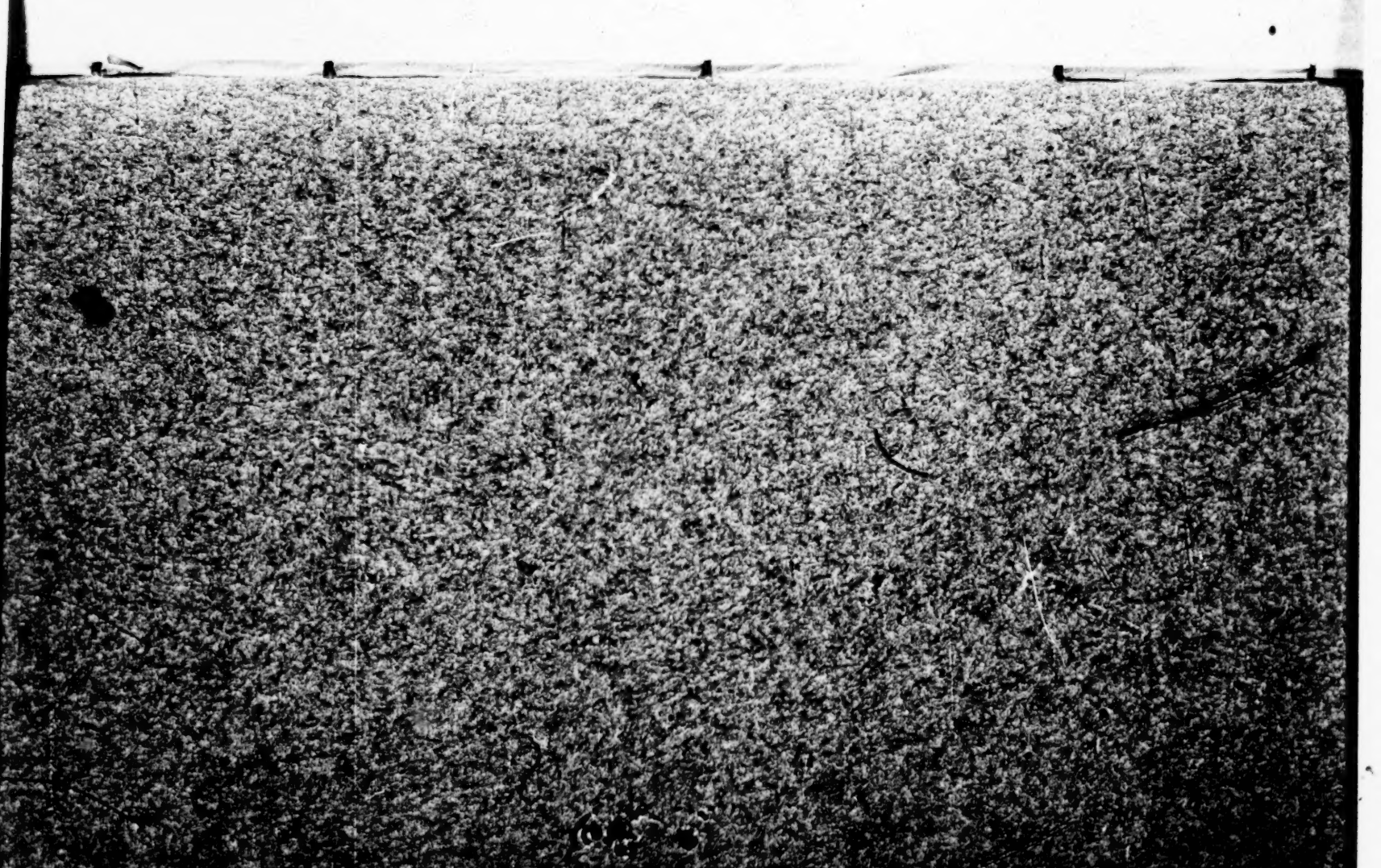

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No. 914

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY, A CORPORATION, APPELLEE,

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MAY IT PLEASE THE COURT:

The appellant, in support of the jurisdiction of this Court to review the above entitled cause on appeal, respectfully represents:

I.

Statutory Provision Sustaining Jurisdiction.

The Act of February 13, 1925, Chapter 229, Section 1, 43 Stat. 938 (United States Code, Title 28, Section 347-b), provides that Section 240 of the Judicial Code is amended to read in part as follows:

> Any case in a circuit court of appeals where is drawn in question the validity of a statute of any State, on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, and the decision is against its validity, may, at the election of the party relying on such State statute, be taken to the Supreme Court for review on writ of error or appeal; but in that event a review on certiorari shall not be allowed at the instance of such party, and the review on such writ of error or appeal shall be restricted to an examination and decision of the Federal questions presented in the case.

II.

Date of Decree and Date of Application for Appeal.

The decree sought to be reviewed was entered on the 2nd day of January, 1929 (R.-CCA.9[1]); and petition for rehearing was denied on the 21st day of February, 1929 (R.-CCA-34).

The application for appeal, with assignments of error and prayer for reversal, was presented on the 22nd day of April, 1929 (R.-CCA. 34).

[1]All references to R.-CCA. are to the pages of the certified unprinted record prepared by the Clerk of the United States Circuit Court of Appeals and on file with the Clerk of this Court. The record has not yet been printed.

III.

Nature of Case and Ruling Below.

The St. Louis Southwestern Railway Company, a corporation organized under the laws of the State of Missouri and authorized to do business in the State of Illinois, filed its bill in the District Court of the United States for the Southern District of Illinois, to enjoin the Secretary of State of the State of Illinois from assessing and collecting an annual franchise tax against it under Section 107 of the General Corporation Act of Illinois, which provides for a minimum tax based on the total issued capital stock, with a maximum limit in amount, which was applied to the complainant pursuant to the last clause of Section 105 of said Act (R.-DC 2-3[2]).

The bill alleges that the tax as assessed by the Secretary of State under Section 107 of said Act would place an unreasonable burden on interstate commerce and deprive the complainant of its privileges and immunities as a citizen, under paragraph 3 of Section 8 and Section 10 of Article I, and Section 2 of Article IV, respectively, of the Constitution of the United States, and would also deny the complainant the equal protection of the law and deprive it of its property

[2]All references to R.-DC are to the pages of the printed transcript of the record of proceedings in the District Court, used in the appeal to the Circuit Court of Appeals, and now on file with the Clerk of this Court as the first part of the record herein.

without due process of law, all in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States (R.-DC 5, 7).

Upon motion of the complainant, a temporary restraining order was entered enjoining the defendant Secretary of State from enforcing the penalties provided by said Act against the complainant on account of its failure to pay said license fee or tax, as prayed in its bill (R.-DC 28-9). Thereafter, the Secretary of State filed a motion to dismiss the said bill of complaint for want of equity (R.-DC 29). Upon the hearing thereon, the District Court in a written opinion upheld the said provisions of said Act as constitutional (R.-DC 30-37), and entered a decree dismissing the said bill for want of equity (R.-DC 37-8); thereupon, the complainant assigned as error the refusal of said Court to hold said Sections 105 and 107 as invalid on the constitutional grounds above stated (R.-DC 40), and perfected an appeal to the United States Circuit Court of Appeals for the Seventh Circuit (R.DC 41).

The said Circuit Court of Appeals held in a written opinion that the State could not assess a tax on the complainant under said Section 107, on the ground that it imposed an unconstitutional tax on the basis of the capital of the foreign corporation, without as well as within the State, in the manner condemned by this Court in the cases of *International Paper Co.* v.

Massachusetts, 246 U. S. 135, and *Looney* v. *Crane Co.*, 245 U. S. 178, and also held in substance that the application of said Section 107 to the appellant there would impose an unlawful burden upon its interstate commerce and take its property without due process of law (R.-CCA 8). That Court thereupon entered a judgment reversing the decree of the District Court and remanding the cause to that Court with directions to enter a decree consistent with the views expressed in the opinion of said Court of Appeals (R.-CCA 9). The said Secretary of State then presented and filed a petition for rehearing (R.-CCA 9), which upon consideration was denied by that Court on February 21, 1929 (R.-CCA 34).

The Secretary of State thereupon presented a petition for appeal to this Court, with assignments of error alleging among other things that the said Circuit Court of Appeals erred in reversing the decree of said District Court and directing that court to enter a decree consistent with the views expressed in said opinion, and in refusing to approve and affirm the decree of said District Court; and also, in holding that said Section 107 imposed an unconstitutional and invalid tax on the said corporation under the decisions of this Court, placed an unlawful burden on its capital and/or property outside the State, imposed an illegal

burden upon its interstate commerce, and/or discriminated against it or took its property without due process of law (R.-CCA 35-6).

The Circuit Court of Appeals thereupon entered an order allowing such appeal to this Court (R.-CCA 36-7), upon the giving of a bond for costs, which was duly filed and approved (R.-CCA 38-9). A citation was then issued to the appellee corporation returnable in thirty days, service of which was duly acknowledged by the attorneys for appellee (R.-CCA 40-2), and such citation and return, with the transcript of the Record, was filed within such time with the Clerk of this Court.

IV.

Cases Believed to Sustain Jurisdiction.

The following decisions of this Court are believed to sustain jurisdiction of this appeal:

Gulf Refining Co. v. *United States,* 269 U. S., 125, 135-6;
Moore v. *N. Y. Cotton Exchange,* 270 U.S., 593, 603;
North Carolina R. R. Co. v. *Story,* 268 U. S., 288, 291;
Moody v. *Century Bank,* 239 U. S., 374, 376;
Chesapeake & Potomac Tel. Co. v. *Manning,* 186 U. S., 238, 240;
Mower v. *Fletcher,* 114 U. S., 127, 128;
Board of Comrs. v. *Lucas, Treasurer,* 93 U. S., 108, 110, 113;
Forgay v. *Conrad,* 6 *How.* 201, 203 (47 U. S.);
Bronson v. *Railroad Co.,* 2 Black 524, 529, 531;
Whiting v. *Bank of United States,* 13 Peters 15.

We respectfully submit that this Court has jurisdiction of this appeal by virtue of Section 240 of the Judicial Code as amended by the Act of February 13, 1925, (now Section 347b), and as further amended or modified by the Act of January 31, 1928.

Respectfully submitted,

OSCAR E. CARLSTROM,
Attorney General of Illinois,
Counsel for Appellant.

BAYARD LACEY CATRON,
Assistant Attorney General,
Of Counsel for Appellant.